

Executive Summary – Enforcement Matter – Case No. 46110
City of Austin
RN101607794
Docket No. 2013-0222-MWD-E

Order Type:

Findings Agreed Order

Findings Order Justification:

People or environmental receptors have been exposed to pollutants which exceed levels that are protective.

Media:

MWD

Small Business:

No

Location(s) Where Violation(s) Occurred:

South Austin Regional WWTP, located between Onion Creek and the Colorado River, approximately two miles west of their confluence, approximately two miles east of the Farm-to-Market Road 973 crossing of the Colorado River and two miles north of State Highway 71, Austin, Travis County

Type of Operation:

Wastewater treatment plant with an associated collection system

Other Significant Matters:

Additional Pending Enforcement Actions: Yes, Docket No. 2013-0794-MWD-E

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: July 5, 2013

Comments Received: No

Penalty Information

Total Penalty Assessed: \$7,500

Amount Deferred for Expedited Settlement: \$0

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$0

Payment Plan: N/A

SEP Conditional Offset: \$7,500

Name of SEP: Travis Audubon Society

Compliance History Classifications:

Person/CN - Satisfactory

Site/RN - Satisfactory

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2011

**Executive Summary – Enforcement Matter – Case No. 46110
City of Austin
RN101607794
Docket No. 2013-0222-MWD-E**

Investigation Information

Complaint Date(s): N/A
Complaint Information: N/A
Date(s) of Investigation: December 5, 2012
Date(s) of NOE(s): January 18, 2013

Violation Information

Failed to prevent an unauthorized discharge of wastewater from the collection system into water in the state [Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010543012, Permit Conditions No. 2.g., 30 TEX. ADMIN. CODE § 305.125(1), and TEX. WATER CODE § 26.121(a)(1)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

Respondent has implemented the following corrective measures:

- a. On December 4, 2012, contained the discharge and began recovery of the wastewater.
- b. On December 5, 2012:
 - i. Ceased the discharge by pumping the wastewater to a downstream manhole;
 - ii. Cleared the root blockage from the sewer main and manhole;
 - iii. Collected and returned to the System approximately 60,000 gallons of the wastewater; and
 - iv. Remediated the affected area by flushing with potable water.

Technical Requirements:

The Order will require Respondent to implement and complete a Supplemental Environmental Project ("SEP"). (See SEP Attachment A)

Litigation Information

Date Petition(s) Filed: N/A
Date Answer(s) Filed: N/A
SOAH Referral Date: N/A
Hearing Date(s): N/A
Settlement Date: N/A

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Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Jennifer Graves, Enforcement Division,
Enforcement Team 1, MC R-15, (956) 430-6023; Candy Garrett, Enforcement Division,
MC 219, (512) 239-1456

TCEQ SEP Coordinator: Stuart Beckley, SEP Coordinator, Enforcement Division,
MC 219, (512) 239-3565

Respondent: Greg Meszaros, Director - Austin Water Utility, City of Austin, P.O. Box
1088, Austin, Texas 78767

Respondent's Attorney: N/A

Attachment A
Docket Number: 2013-0222-MWD-E

Supplemental Environmental Project

| | |
|-------------------------------|---|
| Respondent: | City of Austin |
| Penalty Amount: | Seven Thousand Five Hundred Dollars (\$7,500) |
| SEP Offset Amount: | Seven Thousand Five Hundred Dollars (\$7,500) |
| Type of SEP: | Contribution to a Third-Party Pre-Approved SEP |
| Third-Party Recipient: | Travis Audubon Society |
| Project Name: | Baker Sanctuary Fence Project Phase III |
| Location of SEP: | Colorado River Basin; Edwards Aquifer |

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset the administrative penalty amount assessed in this Agreed Order for Respondent to contribute to a Supplemental Environmental Project ("SEP"). The SEP Offset Amount is set forth above and such offset is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

a. Project

Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient named above. The contribution will be to the **Travis Audubon Society** for the *Baker Sanctuary Fence Project Phase III*. The contribution will be used in accordance with the SEP between the Third-Party Recipient and the TCEQ (the "Project"). Specifically, the SEP Offset Amount will be used to install an eight-foot tall game fence along 1,900 feet of the northern end of the Baker Sanctuary in order to prevent erosion and habitat destruction from the deer. The Third-Party Recipient owns the Baker Sanctuary; a 690 acre habitat preserve located in northwest Travis County for state and federally endangered Golden-cheeked Warbler and other wildlife.

In addition to providing quality habitat, this land helps filter pollutants, which enhances water quality as it flows from Lime Creek to Sandy Creek then into the Cypress Creek arm of Lake Travis. However, Baker Sanctuary has become overrun with white-tailed deer which are destroying the hardwood-juniper woodland habitat and understory plant species the Golden-Cheeked Warblers need to survive. Additionally, the large population of browsing deer causes the land to erode, resulting in decreased water quality and increased runoff into Lake Travis and the Colorado River.

City of Austin
Agreed Order - Attachment A

The Project may involve clearing no more than an eight-foot wide path to facilitate fence construction. The Third-Party Recipient shall minimize disturbance to the Golden-cheeked Warbler during this Project, including considerations of nesting season. This is Phase III of the fence project, which will eventually enclose the entire Sanctuary.

All dollars contributed will be used solely for the direct cost of the Project and no portion will be spent on administrative costs. The SEP will be performed in accordance with all federal, state, and local environmental laws and regulations.

Respondent's signature affixed to this Agreed Order certifies that it has no prior commitment to make this contribution and that it is being contributed solely in an effort to settle this enforcement action.

b. Environmental Benefit

This project will enhance the quality of the environment and prevent pollution by keeping the deer out of Baker Sanctuary, thereby reducing soil erosion and protecting water quality. Additionally, the fence will prevent destruction of habitat critical to the endangered Golden-cheeked Warbler.

c. Minimum Expenditure

Respondent shall contribute at least the SEP Offset Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient. Respondent shall mail the contribution, with a copy of the Agreed Order to:

Travis Audubon Society, Inc.
Attention: Executive Director
3710 Cedar Street
Austin, Texas 78705

3. Records and Reporting

Concurrent with the payment of the SEP Offset Amount, Respondent shall provide the Enforcement Division SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Offset Amount due to the Third-Party Recipient. Respondent shall mail a copy of the check and transmittal letter to:

Texas Commission on Environmental Quality
Enforcement Division
Attention: SEP Coordinator, MC 219
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If Respondent does not perform its obligations under this SEP agreement in any way, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Sections 2 and 3 above, the Executive Director ("ED") may require immediate payment of all or part of the SEP Offset Amount.

In the event the ED determines that Respondent failed to complete the project, Respondent shall remit payment for all or a portion of the SEP Offset Amount, as determined by the ED, and shall include on the check the docket number of this Agreed Order and note that it is for reimbursement of a SEP. Respondent shall make the check payable to "Texas Commission on Environmental Quality" and shall mail it to:

Texas Commission on Environmental Quality
Litigation Division
Attention: SEP Coordinator, MC 175
P.O. Box 13087
Austin, Texas 78711-3087

5. Publicity

Any public statements concerning this SEP made by or on behalf of Respondent, must include a clear statement that the Project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP Offset Amount identified in this Agreed Order has not been, and shall not be, included as a SEP for Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

| | | | | |
|--------------|-----------------|-------------|------------------|-------------|
| DATES | Assigned | 21-Jan-2013 | | |
| | PCW | 28-Jan-2013 | Screening | 28-Jan-2013 |
| | | | EPA Due | |

RESPONDENT/FACILITY INFORMATION

| | | |
|-----------------------------|----------------|---------------------------------|
| Respondent | City of Austin | |
| Reg. Ent. Ref. No. | RN101607794 | |
| Facility/Site Region | 11-Austin | Major/Minor Source Minor |

CASE INFORMATION

| | | | |
|--|-----------------|------------------------------|--------------------|
| Enf./Case ID No. | 46110 | No. of Violations | 1 |
| Docket No. | 2013-0222-MWD-E | Order Type | Findings |
| Media Program(s) | Water Quality | Government/Non-Profit | Yes |
| Multi-Media | | Enf. Coordinator | Steve Villatoro |
| | | EC's Team | Enforcement Team 1 |
| Admin. Penalty \$ Limit Minimum | \$0 | Maximum | \$25,000 |

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** \$7,500

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History 25.0% Enhancement **Subtotals 2, 3, & 7** \$1,875

Notes Enhancement for one agreed order without denial of liability.

Culpability No 0.0% Enhancement **Subtotal 4** \$0

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments **Subtotal 5** \$1,875

Economic Benefit 0.0% Enhancement* **Subtotal 6** \$0

Total EB Amounts \$0
Approx. Cost of Compliance \$3,500
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** \$7,500

OTHER FACTORS AS JUSTICE MAY REQUIRE 0.0% **Adjustment** \$0

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount \$7,500

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** \$7,500

DEFERRAL 0.0% Reduction **Adjustment** \$0

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

No deferral is recommended for Findings Orders.

PAYABLE PENALTY \$7,500

Screening Date 28-Jan-2013

Docket No. 2013-0222-MWD-E

PCW

Respondent City of Austin

Policy Revision 3 (September 2011)

Case ID No. 46110

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101607794

Media [Statute] Water Quality

Enf. Coordinator Steve Villatoro

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

| Component | Number of... | Enter Number Here | Adjust. |
|-------------------------------|--|-------------------|---------|
| NOVs | Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>) | 0 | 0% |
| | Other written NOVs | 0 | 0% |
| Orders | Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>) | 0 | 0% |
| | Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission | 1 | 25% |
| Judgments and Consent Decrees | Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>) | 0 | 0% |
| | Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government | 0 | 0% |
| Convictions | Any criminal convictions of this state or the federal government (<i>number of counts</i>) | 0 | 0% |
| Emissions | Chronic excessive emissions events (<i>number of events</i>) | 0 | 0% |
| Audits | Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>) | 0 | 0% |
| | Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>) | 0 | 0% |
| Please Enter Yes or No | | | |
| Other | Environmental management systems in place for one year or more | No | 0% |
| | Voluntary on-site compliance assessments conducted by the executive director under a special assistance program | No | 0% |
| | Participation in a voluntary pollution reduction program | No | 0% |
| | Early compliance with, or offer of a product that meets future state or federal government environmental requirements | No | 0% |

Adjustment Percentage (Subtotal 2) 25%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Satisfactory Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one agreed order without denial of liability.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 25%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 25%

Screening Date 28-Jan-2013

Docket No. 2013-0222-MWD-E

PCW

Respondent City of Austin

Policy Revision 3 (September 2011)

Case ID No. 46110

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101607794

Media [Statute] Water Quality

Enf. Coordinator Steve Villatoro

Violation Number 1

Rule Cite(s)

Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010543012, Permit Conditions No. 2.g., 30 Tex. Admin. Code § 305.125(1), and Tex. Water Code § 26.121(a)(1)

Violation Description

Failed to prevent an unauthorized discharge of wastewater from the collection system into water in the state. Specifically, on December 4, 2012, a root blockage resulted in an unauthorized discharge of approximately 100,000 gallons of untreated wastewater from a manhole located upstream from an unnamed tributary and flowed into Williamson Creek near 6014 Wagon Bend, and resulted in approximately 105 dead fish.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

| Release | Harm | | |
|-----------|-------------------------------------|--------------------------|--------------------------|
| | Major | Moderate | Minor |
| Actual | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Potential | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Percent 30.0%

>> Programmatic Matrix

| Falsification | Major | Moderate | Minor |
|--------------------------|--------------------------|--------------------------|--------------------------|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Percent 0.0%

Matrix Notes

Human health or the environment has been exposed to pollutants which exceed levels protective of environmental receptors.

Adjustment \$17,500

\$7,500

Violation Events

Number of Violation Events 1

1 Number of violation days

mark only one with an x

| | |
|--------------|-------------------------------------|
| daily | <input checked="" type="checkbox"/> |
| weekly | <input type="checkbox"/> |
| monthly | <input type="checkbox"/> |
| quarterly | <input type="checkbox"/> |
| semiannual | <input type="checkbox"/> |
| annual | <input type="checkbox"/> |
| single event | <input type="checkbox"/> |

Violation Base Penalty \$7,500

One daily event is recommended from the date the discharge began (December 4, 2012) to the date the discharge was stopped and contained (December 5, 2012).

Good Faith Efforts to Comply

25.0% Reduction

\$1,875

Extraordinary

Ordinary

N/A

Notes

| Before NOV | NOV to EDRP/Settlement Offer |
|-------------------------------------|------------------------------|
| <input type="checkbox"/> | <input type="checkbox"/> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <input type="checkbox"/> | (mark with x) |

The Respondent returned to compliance on December 5, 2012.

Violation Subtotal \$5,625

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$7,500

This violation Final Assessed Penalty (adjusted for limits) \$7,500

Economic Benefit Worksheet

Respondent City of Austin
 Case ID No. 46110
 Reg. Ent. Reference No. RN101607794
 Media Water Quality
 Violation No. 1

| Percent Interest | Years of Depreciation |
|------------------|-----------------------|
| 5.0 | 15 |

| Item Description | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|------------------|-----------|---------------|------------|-----|----------------|---------------|-----------|
| No commas or \$ | | | | | | | |

Delayed Costs

| | | | | | | | |
|--------------------------|---------|------------|------------|------|-----|-----|-----|
| Equipment | | | | 0.00 | \$0 | \$0 | \$0 |
| Buildings | | | | 0.00 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.00 | \$0 | \$0 | \$0 |
| Engineering/construction | | | | 0.00 | \$0 | \$0 | \$0 |
| Land | | | | 0.00 | \$0 | n/a | \$0 |
| Record Keeping System | | | | 0.00 | \$0 | n/a | \$0 |
| Training/Sampling | | | | 0.00 | \$0 | n/a | \$0 |
| Remediation/Disposal | \$3,500 | 4-Dec-2012 | 5-Dec-2012 | 0.00 | \$0 | n/a | \$0 |
| Permit Costs | | | | 0.00 | \$0 | n/a | \$0 |
| Other (as needed) | | | | 0.00 | \$0 | n/a | \$0 |

Notes for DELAYED costs

Estimated costs to contain and recover the spill, clear the blockage, and remediate the affected area.
 Date required is the date of the discharge. Final date is the date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

| | | | | | | | |
|-------------------------------|--|--|--|------|-----|-----|-----|
| Disposal | | | | 0.00 | \$0 | \$0 | \$0 |
| Personnel | | | | 0.00 | \$0 | \$0 | \$0 |
| Inspection/Reporting/Sampling | | | | 0.00 | \$0 | \$0 | \$0 |
| Supplies/equipment | | | | 0.00 | \$0 | \$0 | \$0 |
| Financial Assurance [2] | | | | 0.00 | \$0 | \$0 | \$0 |
| ONE-TIME avoided costs [3] | | | | 0.00 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.00 | \$0 | \$0 | \$0 |

Notes for AVOIDED costs

Approx. Cost of Compliance

\$3,500

TOTAL

\$0



Compliance History Report

PUBLISHED Compliance History Report for CN600135198, RN101607794, Rating Year 2012 which includes Compliance History (CH) components from September 1, 2007, through August 31, 2012.

| | | | | | |
|---|--|-------------------------------------|--------------|---------------------|------------|
| Customer, Respondent, or Owner/Operator: | CN600135198, City of Austin | Classification: | SATISFACTORY | Rating: | 1.72 |
| Regulated Entity: | RN101607794, SOUTH AUSTIN REGIONAL WWTP | Classification: | SATISFACTORY | Rating: | 10.94 |
| Complexity Points: | 9 | Repeat Violator: | NO | | |
| CH Group: | 08 - Sewage Treatment Facilities | | | | |
| Location: | located between Onion Creek and the Colorado River, approximately two miles west of their confluence, approximately two miles east of the Farm-to-Market Road 973 crossing of the Colorado River and two miles north of State Highway 71 | | | | |
| TCEQ Region: | REGION 11 - AUSTIN | | | | |
| ID Number(s): | | | | | |
| WASTEWATER PERMIT | WQ0010543012 | WASTEWATER EPA ID | TX0071889 | | |
| WASTEWATER AUTHORIZATION | R10543012 | WASTEWATER LICENSING LICENSE | WQ0010543012 | | |
| Compliance History Period: | September 01, 2007 to August 31, 2012 | Rating Year: | 2012 | Rating Date: | 09/01/2012 |
| Date Compliance History Report Prepared: | January 25, 2013 | | | | |
| Agency Decision Requiring Compliance History: | Enforcement | | | | |
| Component Period Selected: | January 25, 2008 to January 25, 2013 | | | | |
| TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History. | | | | | |
| Name: | Steve Villatoro | | Phone | (512) 239-4930 | |

Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? YES
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO
- 3) If YES for #2, who is the current owner/operator? N/A
- 4) If YES for #2, who was/were the prior owner(s)/operator(s)? N/A
- 5) If YES, when did the change(s) in owner or operator occur? N/A

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:

- 1 Effective Date: 03/20/2010 ADMINORDER 2009-1428-MWD-E (Findings Order-Agreed Order Without Denial)
Classification: Major
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)(1)
Rqmt Prov: WQ0010543012 PERMIT
Description: Failure to prevent unauthorized discharges of wastewater into Water in the State. The discharge is an alleged violation of the Texas Water Code, Chapter 26, Section 26.121(a)(1) and of TPDES Permit WQ0010543012, Permit Conditions, Section 2(a).

See addendum for information regarding federal actions.

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.):

- | | | |
|--------|-------------------|----------|
| Item 1 | February 19, 2008 | (770775) |
|--------|-------------------|----------|

| | | |
|---------|--------------------|-----------|
| Item 2 | March 21, 2008 | (770778) |
| Item 3 | May 19, 2008 | (770779) |
| Item 4 | June 19, 2008 | (770783) |
| Item 5 | August 19, 2008 | (770787) |
| Item 6 | September 22, 2008 | (770788) |
| Item 7 | October 22, 2008 | (770789) |
| Item 8 | October 27, 2008 | (705971) |
| Item 9 | November 19, 2008 | (770791) |
| Item 10 | December 10, 2008 | (770794) |
| Item 11 | December 22, 2008 | (770793) |
| Item 12 | March 23, 2009 | (770777) |
| Item 13 | April 20, 2009 | (770780) |
| Item 14 | April 27, 2009 | (770785) |
| Item 15 | May 19, 2009 | (770782) |
| Item 16 | June 18, 2009 | (927736) |
| Item 17 | June 30, 2009 | (760352) |
| Item 18 | July 03, 2009 | (749088) |
| Item 19 | September 17, 2009 | (927738) |
| Item 20 | September 28, 2009 | (927737) |
| Item 21 | October 21, 2009 | (927739) |
| Item 22 | December 15, 2009 | (927740) |
| Item 23 | January 14, 2010 | (927741) |
| Item 24 | February 12, 2010 | (927732) |
| Item 25 | March 12, 2010 | (927733) |
| Item 26 | May 11, 2010 | (833503) |
| Item 27 | May 19, 2010 | (802840) |
| Item 28 | June 15, 2010 | (847080) |
| Item 29 | August 12, 2010 | (867868) |
| Item 30 | September 13, 2010 | (874813) |
| Item 31 | October 12, 2010 | (865625) |
| Item 32 | October 15, 2010 | (882405) |
| Item 33 | November 19, 2010 | (888855) |
| Item 34 | December 13, 2010 | (897215) |
| Item 35 | January 13, 2011 | (903117) |
| Item 36 | February 14, 2011 | (910040) |
| Item 37 | March 14, 2011 | (917233) |
| Item 38 | April 12, 2011 | (927735) |
| Item 39 | May 13, 2011 | (938930) |
| Item 40 | June 02, 2011 | (915096) |
| Item 41 | June 13, 2011 | (946308) |
| Item 42 | June 29, 2011 | (922911) |
| Item 43 | September 14, 2011 | (966258) |
| Item 44 | September 22, 2011 | (960203) |
| Item 45 | October 25, 2011 | (952169) |
| Item 46 | November 14, 2011 | (978433) |
| Item 47 | December 12, 2011 | (985246) |
| Item 48 | December 22, 2011 | (991525) |
| Item 49 | February 15, 2012 | (998874) |
| Item 50 | March 14, 2012 | (1004400) |
| Item 51 | April 03, 2012 | (1010964) |
| Item 52 | May 15, 2012 | (1017333) |
| Item 53 | June 13, 2012 | (1025132) |
| Item 54 | July 12, 2012 | (1032472) |
| Item 55 | August 21, 2012 | (1038897) |
| Item 56 | September 14, 2012 | (1047801) |

E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

N/A

F. Environmental audits:

N/A

G. Type of environmental management systems (EMSs):

N/A

H. Voluntary on-site compliance assessment dates:

N/A

I. Participation in a voluntary pollution reduction program:

N/A

J. Early compliance:

N/A

Sites Outside of Texas:

N/A

Published Compliance History Report for CN600135198, RN101607794, Rating Year 2012 which includes Compliance History (CH) components from January 25, 2008, through January 25, 2013.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
CITY OF AUSTIN
RN101607794**

**§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§ ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2013-0222-MWD-E

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding the City of Austin ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent presented this agreement to the Commission.

The Respondent understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, the Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Agreed Order are binding upon the Respondent.

The Commission makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. The Respondent owns and operates a wastewater treatment plant with an associated collection system, located between Onion Creek and the Colorado River, approximately two miles west of their confluence, approximately two miles east of the Farm-to-Market Road 973 crossing of the Colorado River and two miles north of State Highway 71 in Austin, Travis County, Texas (the "System").

2. The Respondent has discharged municipal waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. During an investigation conducted on December 5, 2012, TCEQ staff documented that on December 4, 2012, a root blockage resulted in an unauthorized discharge of approximately 100,000 gallons of untreated wastewater from a manhole located upstream from an unnamed tributary and flowed into Williamson Creek near 6014 Wagon Bend, and resulted in approximately 105 dead fish.
4. The Respondent received notice of the violations on January 22, 20013.
5. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the System:
 - a. On December 4, 2012, contained the discharge and began recovery of the wastewater.
 - b. On December 5, 2012:
 - i. Ceased the discharge by pumping the wastewater to a downstream manhole;
 - ii. Cleared the root blockage from the sewer main and manhole;
 - iii. Collected and returned to the System approximately 60,000 gallons of the wastewater; and
 - iv. Remediated the affected area by flushing with potable water.

II. CONCLUSIONS OF LAW

1. The Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.
2. As evidenced by Findings of Fact No. 3, the Respondent failed to prevent an unauthorized discharge of wastewater from the collection system into water in the state, in violation of Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010543012, Permit Conditions No. 2.g., 30 TEX. ADMIN. CODE § 305.125(1), and TEX. WATER CODE § 26.121(a)(1).
3. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against the Respondent for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for

violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.

4. An administrative penalty in the amount of Seven Thousand Five Hundred Dollars (\$7,500) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. Seven Thousand Five Hundred Dollars (\$7,500) shall be conditionally offset by the Respondent's completion of a Supplemental Environmental Project ("SEP").

III. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The Respondent is assessed an administrative penalty in the amount of Seven Thousand Five Hundred Dollars (\$7,500) as set forth in Section II, Paragraph 4 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of Austin, Docket No. 2013-0222-MWD-E" to:

Financial Administration Division, Revenue Operations Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The Respondent shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section II, Paragraph 4 above, Seven Thousand Five Hundred Dollars (\$7,500) of the assessed administrative penalty shall be offset with the condition that the Respondent implement the SEP defined in Attachment A, incorporated herein by reference. The Respondent's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.
3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the System operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a

violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to the Respondent if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
7. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
8. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
9. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

10. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Pam Jones
For the Executive Director

8/13/13
Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of the City of Austin. I am authorized to agree to the attached Agreed Order on behalf of the City of Austin, and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, the City of Austin waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

GREG MESZAROS
Signature

5/14/13
Date

GREG MESZAROS
Name (Printed or typed)
Authorized Representative of
City of Austin

DIRECTOR, AUSTIN WATER UTILITY,
Title
CITY OF AUSTIN

Attachment A
Docket Number: 2013-0222-MWD-E

Supplemental Environmental Project

| | |
|-------------------------------|---|
| Respondent: | City of Austin |
| Penalty Amount: | Seven Thousand Five Hundred Dollars (\$7,500) |
| SEP Offset Amount: | Seven Thousand Five Hundred Dollars (\$7,500) |
| Type of SEP: | Contribution to a Third-Party Pre-Approved SEP |
| Third-Party Recipient: | Travis Audubon Society |
| Project Name: | Baker Sanctuary Fence Project Phase III |
| Location of SEP: | Colorado River Basin; Edwards Aquifer |

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset the administrative penalty amount assessed in this Agreed Order for Respondent to contribute to a Supplemental Environmental Project ("SEP"). The SEP Offset Amount is set forth above and such offset is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

a. Project

Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient named above. The contribution will be to the **Travis Audubon Society** for the *Baker Sanctuary Fence Project Phase III*. The contribution will be used in accordance with the SEP between the Third-Party Recipient and the TCEQ (the "Project"). Specifically, the SEP Offset Amount will be used to install an eight-foot tall game fence along 1,900 feet of the northern end of the Baker Sanctuary in order to prevent erosion and habitat destruction from the deer. The Third-Party Recipient owns the Baker Sanctuary; a 690 acre habitat preserve located in northwest Travis County for state and federally endangered Golden-cheeked Warbler and other wildlife.

In addition to providing quality habitat, this land helps filter pollutants, which enhances water quality as it flows from Lime Creek to Sandy Creek then into the Cypress Creek arm of Lake Travis. However, Baker Sanctuary has become overrun with white-tailed deer which are destroying the hardwood-juniper woodland habitat and understory plant species the Golden-Cheeked Warblers need to survive. Additionally, the large population of browsing deer causes the land to erode, resulting in decreased water quality and increased runoff into Lake Travis and the Colorado River.

City of Austin
Agreed Order - Attachment A

The Project may involve clearing no more than an eight-foot wide path to facilitate fence construction. The Third-Party Recipient shall minimize disturbance to the Golden-cheeked Warbler during this Project, including considerations of nesting season. This is Phase III of the fence project, which will eventually enclose the entire Sanctuary.

All dollars contributed will be used solely for the direct cost of the Project and no portion will be spent on administrative costs. The SEP will be performed in accordance with all federal, state, and local environmental laws and regulations.

Respondent's signature affixed to this Agreed Order certifies that it has no prior commitment to make this contribution and that it is being contributed solely in an effort to settle this enforcement action.

b. Environmental Benefit

This project will enhance the quality of the environment and prevent pollution by keeping the deer out of Baker Sanctuary, thereby reducing soil erosion and protecting water quality. Additionally, the fence will prevent destruction of habitat critical to the endangered Golden-cheeked Warbler.

c. Minimum Expenditure

Respondent shall contribute at least the SEP Offset Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient. Respondent shall mail the contribution, with a copy of the Agreed Order to:

Travis Audubon Society, Inc.
Attention: Executive Director
3710 Cedar Street
Austin, Texas 78705

3. Records and Reporting

Concurrent with the payment of the SEP Offset Amount, Respondent shall provide the Enforcement Division SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Offset Amount due to the Third-Party Recipient. Respondent shall mail a copy of the check and transmittal letter to:

City of Austin
Agreed Order - Attachment A

Texas Commission on Environmental Quality
Enforcement Division
Attention: SEP Coordinator, MC 219
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If Respondent does not perform its obligations under this SEP agreement in any way, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Sections 2 and 3 above, the Executive Director ("ED") may require immediate payment of all or part of the SEP Offset Amount.

In the event the ED determines that Respondent failed to complete the project, Respondent shall remit payment for all or a portion of the SEP Offset Amount, as determined by the ED, and shall include on the check the docket number of this Agreed Order and note that it is for reimbursement of a SEP. Respondent shall make the check payable to "Texas Commission on Environmental Quality" and shall mail it to:

Texas Commission on Environmental Quality
Litigation Division
Attention: SEP Coordinator, MC 175
P.O. Box 13087
Austin, Texas 78711-3087

5. Publicity

Any public statements concerning this SEP made by or on behalf of Respondent, must include a clear statement that the Project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP Offset Amount identified in this Agreed Order has not been, and shall not be, included as a SEP for Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.